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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,600	03/15/2004	Ronald W. McGehee	P08207US02/MP	8262

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EXAMINER	
MILLER, BENA B	

ART UNIT	PAPER NUMBER
3725	

MAIL DATE	DELIVERY MODE
05/01/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/799,600	MCGEHEE ET AL.	
	Examiner	Art Unit	
	Bena Miller	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 January 2008*.

2a)☒ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) *22-24* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-15 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over either of Mierau et al or Kennedy et al.

Mierau et al or Kennedy et al on most of the elements of the claimed invention including a control system (col. 4, par. 1; or 20 and col. 13, par. 4 – col. 14, par. 2, respectively), a work piece feed path (10 or col. 15, par. 4 – col. 16, line 11, respectively), an optimizing planer (70 or col. 16, par. 3 and 4, respectively) and a work piece interrogator (64 or 136, respectively) and a plurality of profile detectors (24 or 14), complier (22 or col. 10, lines 40-46. However, Mierau et al or Kennedy et al fails to teach adjusting the cross-sectional location of the optimized cross-sectional profile along the length. Mierau et al teach an optimizing device having shift and lift mechanism used to rotate, elevate/lift and skew (pivot and or side shift), laterally or pivoted in either direction, a log (col. 3, lines 50-54 and col. 5) in order to adjust the log for aligning with a saw or a chipper. This adjustment will produce its desired maximum production for the log. Kennedy et al also teach an optimizing device having positioning

means, such as positioning cams or positioning pins (col. 4, lines 33-35), for adjusting curved workpieces (col. 3, lines 15-47). The workpieces are fed longitudinally a long a tool path in which the tool path includes a cutting device (chipping head and saws) that corresponds with the positioning means for optimized cutting. This adjustment will also produce its desired maximum production for the log. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the cross-sectional location of the profile along the length of the workpiece of Mierau et al or Kennedy et al for the reasons noted above.

Claims 16-21 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Mierau et al in view of Kennedy et al.

Mierau et al teach most of the elements of the claimed invention, including a plurality of profile detectors (24), a complier (22), and linear positioners (26). However, Mierau et al fail to teach twist relative movement and adjusting the cross-sectional location of the optimized cross-sectional profile along the length. Mierau et al teach an optimizing device having shift and lift mechanism used to rotate, elevate/lift and skew (pivot and or side shift), laterally or pivoted in either direction, a log (col. 3, lines 50-54 and col. 5) in order to adjust the log for aligning with a saw or a chipper. This adjustment will produce its desired maximum production for the log. It would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the cross-sectional location of the profile along the length of the workpiece of Mierau et al for the reasons noted above.

Kennedy et al teach that it is known to use twist relative movement when optimizing workpieces (Abstract, lines 10-16 and col. 16, par. 4). It should be noted that examiner takes the position curving produced by the device of Kennedy et al would include some form of twisting, i.e., to move with a turning motion. Therefore, it would have been obvious to one of ordinary skill in the art to incorporate a twist relative movement, as suggested by Kennedy et al, in the device of Mierau et al for the purpose of providing a desired maximum production for the work piece.

Response to Arguments

Applicant's arguments filed 02/01/07 have been fully considered but they are not persuasive. Applicant argues the prior art fails to teach optimizing planing of adjacent workpieces considered as a series of end-to-end boards by adjusting the workpiece to workpiece location of the desired cross-section profile, the applicant's attention is directed to the above rejection.

The Applicant also argues the size of the gaps may also be minimized if a number of separate scanners are used, each scanning a section of the board to be planed, and then the geometric profile or other defect data from each scanner, meter, gauge, sensor or other defect detector compiled into one workpiece property information profile for each workpiece. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057

(Fed. Cir. 1993). However, Mierau et al and Kennedy et al both teach a plurality of profile detectors and a complier as noted in the above rejection. Further, Mierau et al and Kennedy et al both teach constraining the positioning of the location of the desired profile as also noted in the above rejection.

Applicant finally argues the prior art fails to teach twisting relative movement. As noted above, the examiner has taken the position that the curving produced by the device of Kennedy et al would include some form of twisting. In this instance, Kennedy et al teaches the saw cluster 164 rotates about the vertical axis when cutting the cant (col. 16, par. 3). Therefore, Kennedy et al teach twisting relative movement.

For the reasons noted above, this Office Action is Final.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bena Miller/
Primary Examiner, Art Unit 3725
April 25, 2008